



Interim
Deputy
Commissioner
Joseph McDermott

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Appellate Tax Board Jurisdiction

James Crowley, Esq. - Bureau of Municipal Finance Law

The case of [Truss Engineering Corporation v. Assessors of Springfield, docket No. F309857 \(October 4, 2013\)](#) concerns Appellate Tax Board (ATB) jurisdiction over a personal property tax appeal.

For fiscal year 2010 the Springfield assessors valued Truss Engineering Corporation's (Truss) personal property for more than \$1 million and assessed taxes in excess of \$43,000. Truss timely filed an [abatement application](#) on February 10th, 2010 to contest the value of the machinery. Despite discussions with the assessors, the taxpayer failed to receive an overvaluation abatement. The assessors denied the abatement application on May 10, 2010. The taxpayer then decided to appeal to the ATB. Under [Chapter 59 Section 64](#), the taxpayer had until August 10th to appeal to the ATB which was three months from the date of the assessors' denial. The taxpayer sent the petition for formal appeal to the ATB by U.S. mail. The ATB received the petition on August 16th in an envelope postmarked August 10th. Under the postmark rule contained in [Chapter 59 Section 64](#), the date of the postmark (and not the date of actual receipt) is deemed to be the date of the filing. For this reason the application was timely filed with the ATB.

[Chapter 59 Section 64](#) also has a payment requirement. The opening sentence of [Chapter 59 Section 64](#) recites in pertinent part that "A person aggrieved by the refusal of the assessors to abate a tax on personal property at least one-half of which has been paid" may appeal to the ATB. This is in contrast to the provision of the statute that

requires that payment in full "without incurring interest" to maintain an appeal of a real estate tax over \$3,000. On August 10th the taxpayer paid \$21,727 which was more than one half of the assessed personal property tax in order to satisfy the jurisdictional payment requirement. The receipt from the collector recited \$21,727 as the amount paid on the personal property tax for fiscal year 2010 and did not show any allocation of the payment to interest and charges. Nevertheless, the Springfield assessors sought to dismiss the appeal on the grounds that the taxpayer had not paid one half of the tax since interest and charges had accrued on the late paid tax. Internal records of the collector confirmed that a portion of the payment was applied to interest and charges and this application of payment was required by [Chapter 60 Section 3E](#). Consequently, the assessors contended that the ATB lacked jurisdiction.

The ATB disagreed with the assessors. The ATB held that the collector's internal act of allocating the tax payment, over which the taxpayer had no control, could not affect the taxpayer's procedural right to appeal the valuation of the personal property. The ATB reviewed legislative history to show that [Chapter 59 Section 64](#) had been amended in 1945. Prior to 1945, full payment of the personal property tax was required to maintain an appeal to the ATB. Presently, the one-half tax payment requirement makes appeal rights more accessible to taxpayers. According to the ATB, the Springfield collector's internal action of applying payment to interest and charges and then to tax thereby reducing the tax payment was a "snare for the unwary" which should not affect taxpayer's appeal rights. According to the ATB, the taxpayer had no notice of the collector's action since the receipt given to the taxpayer recited that the taxpayer had paid one-half of the tax.

The ATB contended that notice is essential for due process. In support of its view, the ATB referred to the Supreme Judicial Court decision of [Belair Construction Co. v. Board of Assessors of Quincy, 393 Mass. 1007 \(1985\)](#) (Belair). In the Belair case, the Court held that the city collector's internal act of applying a tax payment to a water lien which appeared on the tax bill, thereby leaving a portion of the tax itself unpaid, did not deprive the taxpayer of its right to appeal the property valuation to the ATB. The Court in Belair stated that the receipt given to the taxpayer was sufficient evidence that the taxpayer's payment was applied to real estate tax and not to the water lien.

According to the ATB, procedural appeal rights should be safeguarded. The ATB ruled it had jurisdiction to hear this appeal since half the personal property tax was paid. On the issue of valuation the ATB substantially reduced the value and abated over \$20,000 in personal property taxes. In the Truss case, the taxpayer prevailed on procedural

and substantive grounds since the taxpayer did not forfeit its appeal rights and satisfied its burden of proof that the personal property had a lower valuation.

On Performance Bonds: Are You Covering Your Assets?

Tony Rassias - Deputy Director of Accounts

Governments are exposed to a number of risks such as damage to property, natural disasters, bank failure, and judgments and settlements to name a few. Oftentimes, these risks are covered by insurance, while other times risks may be self-insured.

This article is a reminder to all municipal chief executive officers, as well as collectors, treasurers and clerks of all cities, towns and districts of a risk that must legally be covered by a surety bond: loss due to the failure to perform faithfully the duties of office.

Brief History

In 1908, the Massachusetts Tax Commissioner recommended for uniformity that the form of a collector's bond be either fixed by the legislature or approved by the Tax Commissioner.

In 1915, the Commissioner indicated that the form of bond issued by surety companies was "designed to limit the liability of the company to the lowest possible terms." The Commissioner added, "A bond covering the honesty of the collector falls far short of the requirements of the statute for faithfulness in the discharge of his duty. Faithfulness of the collector of taxes requires not only honesty but fidelity in the exercise of his duties."

It was not until Chapter 65 of 1926 that the Commissioner gained control over both the form of the bond and the minimum amounts necessary to be obtained by local collectors and treasurers. The minimum amounts adopted in 1926 were on a graduated scale that ranged from \$800 to \$150,000. The form of the bond approved by the Commissioner included the words "faithfully perform all the duties of said office, as required by law."

Obligation to Obtain a Bond

Today, Massachusetts General Laws obligate performance bonds to be obtained by treasurers, assistant treasurers, collectors, assistant and

deputy collectors, clerks and school principals for the faithful performance of their duties. These bonds must be furnished by a surety company authorized to transact business in Massachusetts as surety.

The bond is intended to protect the city, town or district, not the local official and is therefore payable to the governmental entity. The premium for the bond is included in the entity's budget.

The form of the performance bond and the minimum bond amount are the responsibilities of the Commissioner of Revenue. Neither the form nor the tiered bond amount schedule has changed significantly since 1926. Currently, there is some discussion as whether to raise minimum coverage amounts.

1.) Treasurers ([MGL c. 41, s. 35](#)) and Collectors ([MGL c. 60, s. 13](#))

City and town treasurers and collectors, including temporary treasurers and collectors, must obtain a performance bond within 10 days of election or appointment. If they have not or cannot be bonded, in the case of treasurers, the selectmen or mayor must declare the office vacant. In the case of collectors, the selectmen or mayor may declare the office vacant. The final bond amount is set by the selectmen or mayor, but cannot be set less than the Commissioner's minimum bond amount.

Copies of bonds are filed with each local official bonded as well as with the city, town or district clerk.

In addition to their own bond requirement, treasurers should ensure that all other employees handling money be bonded, either individually or under a blanket policy.

2.) Assistant Treasurers ([MGL c. 41, s. 39A](#)) and Collectors ([MGL c. 41, s. 39C](#))

Assistant treasurers and assistant collectors must also obtain a performance bond within ten days of appointment. For them, the Commissioner's minimum bond amount is 25 percent of the treasurer's or collector's bond amount.

3.) Deputy Tax Collector ([MGL c. 60, ss. 2B, 92](#))

A deputy collector is an agent of the collector whether an "inside deputy" or an "outside deputy" and must obtain a performance bond in an amount no less than the Commissioner's minimum. The General Laws, however, offer no time limit in obtaining a bond, nor penalty for

not doing so. In this case, a best practice may be to hire the inside or outside deputy contingent upon their obtaining a bond or at least upon obtaining a binder.

Inside deputies are usually employees of the governmental entity; outside deputies may be employees of an outside service defined by law as "one or more private persons, companies, associations or corporations doing business in the Commonwealth to provide collection services with respect to unpaid municipal taxes, other than taxes for real property, for which a demand has already been made."

The collector must annually approximate the aggregate amount which will be in the inside or outside deputy's custody for the year. Then, either the Commissioner's minimum of \$6,500 or a greater amount as determined by the collector will be required of each. An outside deputy employed by an outside service must personally obtain a sufficient bond for each governmental entity served.

4.) Clerks ([MGL c. 41, ss. 13, 13A](#))

Because clerks receive money for such functions as issuing licenses and certifying copies of official documents, clerks (municipal clerks, not office clerks) must obtain an annual performance bond within 10 days of election or appointment in an amount set by the mayor or selectmen, but not less than the Commissioner's minimum. If the clerk has not or cannot be bonded, the selectmen or mayor may declare the office vacant.

5.) School Principals ([MGL c. 71, s. 47](#))

Chapter 66 of 1996 first required a school principal designated to operate and control a Student Activity Checking Account to give bond to the municipality or district for faithful performance of their duty in connection with the account. The bond amount is determined by the municipal or district treasurer. As in the case of deputy tax collectors, the General Laws offer no time limit in obtaining this bond, nor a penalty for not doing so. In this case, a best practice is for the treasurer to remind the school principal and the superintendent of schools of the requirement to do so. The school committee votes to set the maximum balance that may be on deposit in such Student Activity Checking Account.

6.) Special Purpose and Regional School Districts ([MGL c. 60, s. 92; MGL c. 41, ss. 121-123A; MGL c. 71, ss. 16A, 47](#))

The same requirements that apply to all city and town treasurers,

collectors, deputy collectors, clerks and principals apply to these officials in special purpose and regional school districts.

7.) Recommittal Bond ([MGL c. 60, ss. 13, 14, 97](#))

Chapter 308 of the Acts of 1941 required the collector to file a separate bond on uncollected accounts turned over or "recommitted" to him or her by the assessors as authorized by [MGL c. 60, s. 97](#). This bond uses the same form as the bonds already discussed in this article and uses the same bond amount schedule.

The recommittal bond is used in the first year of the official's election or appointment. After that, the annual performance bond amount must include all uncollected taxes of any fiscal year.

Local Oversight

The power to oversee local performance bonding at the local level is evidenced by the General Laws (1) obligating certain officials to obtain a performance bond, (2) directing assessors not to commit tax list until the collector and treasurer have been bonded, and (3) ordering the chief executive officer to declare the treasurer's office vacant and possibly the collector's office vacant if the treasurer or collector does not obtain a bond within ten days of election or appointment or does not renew a bond within ten days of expiration.

Calculating a minimum bond amount

To calculate the minimum amount, local officials must determine the amount of money from all sources that they expect to handle during the year being covered and note on the Bond Amount Schedule the minimum amount of bond required.

- For a treasurer, this may include the tax levy and estimated receipts, money in trust funds, community preservation funds, and bond proceeds.
- For the collector, this may include the tax levy, community preservation funds, uncollected taxes for any year and if a city/town collector, revenues collected from all sources.
- For a municipal clerk, monies include those collected from licenses, permits, and fees.

Current Bond Amount Schedule

Amount of Money Handled	Minimum Amount of Bond Required
\$30,000 or less	\$6,500
\$30,001 - \$100,000	\$15,000
\$100,001 - \$500,000	\$35,000
\$500,001 - \$1,000,000	\$65,000
\$1,000,001 - \$2,000,000	\$80,000
\$2,000,001 - \$5,000,000	\$100,000
\$5,000,001 - \$10,000,000	\$120,000
\$10,000,001 - \$25,000,000	\$150,000
\$25,000,001 - \$50,000,000	\$200,000
\$50,000,001 - \$100,000,000	\$250,000
\$100,000,001 - \$200,000,000	\$300,000
Amounts over \$200,000,000	\$300,000 plus \$100,000 for each additional \$100,000,000 (round to nearest \$100,000,000)

Conclusion

Bonding provides an important protection for governmental entities. For all local officials involved, if you are unclear as to what a performance bond covers, a conversation with your insurance agent, surety, city solicitor or town counsel is a great idea.

Sharyn Adelman Bids Goodbye to DLS

Bob Bliss - DLS Regional Manager and Director of Strategic Planning



After 23 years in the Division of Local Service, most recently serving as executive assistant to the deputy commissioner, Sharyn S. Adelman is prepared to set out on her next adventure. Just don't call it retirement.

After she moves to Naples, Florida next month with Michael Adelman, her husband of 45 years, Sharyn expects to dive back into the world of art and photography. "I don't consider this a retirement; it's a new phase, a new beginning," she said, as she outlined plans to set up a website and go on from there with her painting, printmaking and photography.

Of course, two of her five grandchildren, seven year old Taylor and four year old Avery, will be nearby as well, having moved to Naples six months ago with Sharyn's daughter Rachael and husband Matt. Sharyn is looking forward to her son Craig and grandsons Brandon, Ethan and Jacob visiting often from Massachusetts and enjoying vacations around the pool.

A resident of Newburyport and a commuter on the MBTA North Shore line, Sharyn and her husband previously lived in Swampscott for 32 years, where they raised their two children. Sharyn and her husband will live in a three-bedroom condominium with a lake view in North Naples called The Vineyards in a neighborhood with five miles of

lighted walking paths, lakes and golf nearby.

Sharyn came to DLS as a temp with a background as an art director in advertising after having studied at the Boston Museum of Fine Arts School and the New England School of Art. Ed Collins was deputy commissioner and Leslie Kirwan served as his assistant. "The fact that DLS was involved with helping municipalities and assisting them interested me. I felt it was something I wanted to be involved in," Sharyn said.

She got involved with preparing materials for DLS such as quarterly reports, slide presentation, trade show exhibits, and laying out *City & Town*, which in its infancy was set in type for publication. To keep her skills sharp, she took courses at Northeastern University in software program such as PageMaker and Microsoft Office, and also became the DLS event photographer.

Along the way, she has worked with deputy commissioners Collins, Kirwan, Bob Marsh, Harry Grossman, Joseph Chess, Gerry Perry, Bob Nunes and now interim deputy commissioner Joe McDermott.

"I loved working here; it was like a second family. The people are a wonderful group of dedicated professionals who go over and above to serve local officials and their communities and I was lucky to be involved. I will look back on my 23 years with wonderful memories of my interesting, funny colleagues. I don't know what happened to the time," she said.

Retirement Announcements

City & Town Editorial Board

Two senior deputies are retiring from DLS. IT Director Dave Davies worked his last office day today after 28 years of service. Director of Accounts Gerry Perry is retiring on January 30th after a 31 year career in the Department of Revenue and the Division of Local Services. *City & Town* will present interviews with both in the February 5th edition. Until then, please feel free to contact them directly or email cityandtown@dor.state.ma.us with any congratulatory messages.

January Municipal Calendar

January 1

Assessors

Property Assessment Date

		This is the effective date (not for exemption purposes) for statewide valuation and assessment of all property for the following fiscal year.
January 31	DESE	<p>Notify Communities/Districts of Estimated Net School Spending Requirements for the Next Year</p> <p>As soon as the Governor releases the ensuing year's budget, DESE notifies communities/districts of the estimated NSS requirements. These figures are subject to change based on the final approved state budget.</p>
Final Day of Each Month	State Treasurer	<p>Notification of monthly local aid distribution.</p> <p>Click www.mass.gov/treasury/cash-management to view distribution breakdown.</p>
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